UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THOMAS F. BOYLE, JR., et al., Appellants, vs. FRED R. DICKSON, et al., Appellees.	)	No. 22539

BRIEF OF APPELLEES

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JURISDICTION

The order of the United States District Court for the Northern District of California, dismissing appellant's complaint, in the proceeding entitled Thomas F. Boyle, Jr., et al. v. Fred R. Dickson, et al., No. 47799, was issued November 27, 1967. Appellants, state prisoners, purported to commence a class action based on claims alleged under Title 42, United States Code sections 1983 and 1985 (the Civil Rights Act), and sought the jurisdiction of the District Court under Title 28, United States Code section 1331, and 1343. Appellants also purported to invoke in the District Court the provisions of Title 28, United States Code sections 2281 and 2284 (convening a three judge court to enjoin

enforcement of a state statute). The jurisdiction of this Court is invoked under Title 28, United States Code sections 1291 and 1915.

STATEMENT OF THE CASE AND OF THE FACTS

On or about September 8, 1967 appellants filed a civil complaint in the District Court. Named as defendants are each of the members of the California Adult Authority, the California Adult Authority as a body, two parole agents individually and as agents of the Adult Authority, Ronald Reagan, Governor of California, the California Legislature as a body, and the People of the State of California.

On November 3, 1967 a motion to dismiss the action was filed on behalf of the defendants Ronald Reagan, the California Adult Authority, and the individual members thereof. On or about November 22, 1967, appellants filed a document entitled "Notice of Motions and Motions to Amend and in Opposition to Defendants' Motion to Dismiss." Appellees' motion to dismiss was argued on November 27, 1967 and on the same date the District Court dismissed the action with prejudice because the complaint failed to state a claim upon which relief can be granted.

On December 27, 1967 appellants filed a notice of appeal and the District Court ordered appeal in forma pauperis pursuant to Title 28, United States Code section

1915. On January 17, 1968 appellants' motion for counsel on appeal was denied by the District Court. Appellants' Opening Brief was filed March 11, 1968 and on March 17, 1968 appellants' request for the appointment of counsel on appeal was denied by this Court.

Appellants' complaint purports to allege five causes of action. The first cause of action contends the Adult Authority has been delegated quasi-judicial and quasi-legislative powers in violation of the Constitution. The second cause of action contends the procedures employed by the Adult Authority in determining violations of parole and revoking parole are unconstitutional. The third cause of action contends Adult Authority Resolution No. 171 is unconstitutional for several reasons. The fourth cause of action contends the parole officers mentioned only detrimental facts and failed to mention beneficial facts and circumstances when writing reports on parole violations and thereby have deprived appellants of their constitutional rights. The fifth cause of action contends appellants' constitutional rights are violated by the Adult Authority's exercise of its statutory power to fix and refix expiration dates of appellants' indeterminate sentences.

Appellants demanded relief by way of an injunction restraining the Adult Authority from enforcing

the California Indeterminate Sentence law and also by way of an award of damages totalling $610,000.

The complaint was accompanied by a declaration of appellant Thomas F. Boyle and a declaration of appellant Jack Tippett. The declarations each set forth allegations that the respective appellant's parole had been revoked and sentence refixed without sufficient cause.

APPELLANTS' CONTENTION

The District Court erred by dismissing the action when appellants' complaint set forth violations of the Civil Rights Act.

SUMMARY OF APPELLEES' ARGUMENT

It is well settled by the decisions of this Court that the California Indeterminate Sentence law is valid under the United States Constitution. For this reason and also because a civil rights action may not be used as a substitute for habeas corpus, enforcement of the California Indeterminate Sentence law may not properly be enjoined under the provisions of the Civil Rights Act. The conduct alleged to have been perpetrated by the California Adult Authority and the individual members thereof falls within the area of immunity from civil liability; even construed most favorably in favor of stating a claim, appellants' allegations nevertheless only tend to show the Adult Authority acted within or

perhaps in excess of its jurisdiction but not in the absence of jurisdiction. No claim whatsoever is stated against Governor Ronald Reagan. The alleged conduct of the parole agents violated none of appellants' federally protected rights. It cannot reasonably be said that the complaint could be amended to state a claim upon which relief could be granted. Accordingly, the District Court did not err by dismissing the action.

ARGUMENT

THE COMPLAINT IN THE DISTRICT COURT DID NOT STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Appellants' complaint is twofold in nature. Appellants on the one hand contend that the California Indeterminate Sentence law is unconstitutional on its face. On the other hand, appellants contend that the Indeterminate Sentence law has been applied to them so that their parole has been revoked and their terms refixed without sufficient cause.

It is essential to a claim either under section 1983 or section 1985 of Title 42, United States Code, that the defendants are alleged to have deprived plaintiffs of some federally-protected right. Cohen v. Norris, 300 F.2d 24, 30 (9th Cir. 1962); Hoffman v. Halden, 268 F.2d 280, 292 (9th Cir. 1959), overruled on other grounds in Cohen v. Norris, supra 300 F.2d at 29-30. The complaint

in the instant case failed to meet this requirement.

It is well settled that no federal question is raised by alleging that powers exercised by the Adult Authority have been illegally delegated by the California Legislature nor by the allegation that it is cruel and unusual punishment for the Adult Authority to refix the expiration date of a sentence because of rules infractions, nor by the allegation that some prisoners are longer in prison than others with similar convictions. Sturm v. California Adult Authority, No. 22072 (9th Cir. Dec. 21, 1967). Similarly, neither state law nor the federal Constitution requires the right to a hearing on revocation of parole at which the prisoner is entitled to counsel, to cross-examine witnesses, or to summon witnesses on his own behalf to support the prisoner's denial that he violated parole. Williams v. Dunbar, 377 F.2d 505, 506 (9th Cir. 1967); In re McLain, 55 Cal.2d 78, 84-85, 357 P.2d 1080 (1960); In re Smith, 33 Cal.2d 797, 804, 205 P.2d 662 (1949).

It is also well settled that no federal question is raised by the allegation the Adult Authority may have based its decision on evidence which would not be admissible in a criminal proceeding; the strict evidentiary procedural limitations applicable to tribunals passing on guilt have no application to a parole revocation hearing. See, e.g., Williams v. New York, 337 U.S. 241, 246-49 (1949);

In re McLain, supra; In re Smith, supra.

Appellants' allegation that the California Adult Authority acted in excess of its jurisdiction when it revoked their paroles and refixed their terms is insufficient to state a claim under the Civil Rights Act. This is so because the members of the Adult Authority are immune from civil liability for discretionary acts done in their quasi-judicial capacity even though done in excess of jurisdiction but not with a clear absence of all jurisdiction. Bauers v. Heisel, 361 F.2d 581, 590-91 (3rd Cir. 1966), rehearing denied June 9, 1966. This is true even though the Adult Authority is alleged to have acted not only in excess of its jurisdiction but arbitrarily, capriciously, or maliciously. See, e.g., Williams v. Dunbar, 377 F.2d 505, 506 (9th Cir. 1967); Lang v. Wood, 92 F.2d 211, 212 (D.C. Cir.), cert.denied 302 U.S. 686 (1937); Bauers v. Heisel, supra, 361 F.2d at 590.

To the extent that appellants' allegations may indicate the revocation of their paroles and the refixing of their sentences was invalid under the United States Constitution, the allegations should be presented by way of a petition for writ of habeas corpus. As is indicated above, the various governmental officials involved cannot properly be held civilly liable for an exercise of discretion done in their official capacity and not with a clear absence of authority. Because it is well settled that the

Indeterminate Sentence law is not unconstitutional on its face, its enforcement cannot in general be enjoined. See, e.g., Smith v. California, 336 F.2d 530 (9th Cir. 1964).

Moreover, it would be improper to specifically enjoin the enforcement of these laws which may have been improperly applied to revoke the parole and refix the terms of particular state prisoners. In the first place, a civil rights action such as the instant case cannot be treated as a petition for a writ of habeas corpus because the appellants' custodian is not a party to the action. Gaito v. Strauss, 368 F.2d 787, 788 (3rd Cir. 1966), cert.denied 386 U.S. 977 (1967). An action under the civil rights statutes may not be used as a substitute for habeas corpus. DeWitt v. Pail, 366 F.2d 682 (9th Cir. 1966); Johnson v. Walker, 317 F.2d 418 (5th Cir. 1963); Gaito v. Strauss, supra. This is particularly true where to consider a civil rights action in such light would allow plaintiff to avoid the exhaustion of state remedies requirements of Title 28, United States Code section 2254. Johnson v. Walker, supra, 317 F.2d at 419-20; Davis v. Maryland, 248 F.Supp. 951, 952-53 (W.D. Md. 1965).

The above discussion is dispositive of the action insofar as it relates to the validity and the implementation of the California Indeterminate Sentence

law, the California Adult Authority, and its individual members. The second cause of action listed in the complaint purports to set forth a basis for civil liability of the two named parole agents. In this regard, appellants claimed Mr. Green and Frank Rao, in their capacity as parole agents, violated appellant's federally-protected rights by including only detrimental facts and circumstances in their parole reports and omitting beneficial facts and circumstances. This claim can readily be dismissed as patently frivolous. Appellants do not allege the facts set forth in the parole violation reports were false, and it is quite obvious that none of appellants' federally-protected rights were violated by this alleged conduct of the parole officers. This is because determination of what facts and circumstances are relevant and important to making a judgment regarding the revocation of parole and the refixing of a term is properly placed in the hands of the parole authorities. See, Williams v. Dunbar, supra, 377 F.2d at 506.

With regard to appellee Ronald Reagan, Governor of the State of California, not only did appellants' complaint fail to state a claim but its language is expressly self-limiting so that it could not reasonably be amended to state a claim (Complaint, p. 5, par. 11).

The remaining named parties are "The California

Legislature, as a body" and "The People of the State of California." No action under the Civil Rights Act lies against such defendants. Monroe v. Pape, 365 U.S. 167, 187-92 (1961).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the order of the District Court dismissing the action be affirmed.

Dated: April 9, 1968

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CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit and that in my opinion this brief is in full compliance with these rules.

Dated: San Francisco, California

April 9, 1968

Karl S. Mayer

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